IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No. 136 of 1991

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Appellant(s)
Versus
MAGANBHAI LAXMANBHAI - Defendant(s)

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Appearance :
MR LR PUJARI, AGP for Appellant
MR DAVE for MR YS LAKHANI for Respondent

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 20/12/2006

ORAL JUDGMENT

1. The appeal has been admitted for hearing the parties on 18.7.91 on the following substantial question of law:-

> “1. In the facts and circumstances of the case, whether the appellate court erred in law in reversing the judgment and decree of the trial court, though the Civil Court has no jurisdiction in view of the provisions of Section 11 of the Gujarat Civil Services Tribunal Act, 1972?
> 2. Whether the suit was bad for want of statutory notice u/s.80 of the Code of Civil Procedure?”

2. During course of the arguments, learned counsel for the appellant submitted that in view of the legal position and the facts an additional question of maintainability of the suit in form in which it has been filed be also framed. Agreeing with the learned counsel, I frame the following additional question:-

> “Whether on the facts and in the circumstances, the plaintiff having accepted the order dated 1.1.82 and the recommendations dated 4.1.82 could be allowed to file the suit challenging the order dated 1.1.82 after he was not allowed

to join at Surendranagar or plaintiff was required to file the suit against the Forest Officer, Forest Department, Surendranagar?”

3. The short facts necessary for disposal of the present appeal are that the plaintiff and number of others were appointed as Forest Guard at Keshod on 31.8.81 under exh. 17. These persons were allowed to work for four and half months, vide letter dated 1.1.82 [exh.18] they were declared surplus and were discharged. However, under letter dated 4.1.82, the Deputy Forest Officer, Keshod[Junagadh] made recommendations to the Forest Officer, Surendranagar that two persons named in the recommendations be absorbed and allowed to work as Forest Guard in Surendranagar Division. The petitioner and one Hira Masri Rathod, under the letter dated 4.1.82 went to Surendranagar, Hira Masri was allowed to join, but the present plaintiff was not allowed to join the services, firstly on the ground that no vacancy was left and secondly on the ground that his height was below 163.cms. which was minimum requirement for appointment as Forest Guard. The plaintiff, facing such severe

consequences and the problems, filed the suit submitting inter alia that the order dated 1.1.82 [exh.18] was bad in law because junior to him was retained in services at Surendranagar. The defendant appeared before the Court and submitted that the order dated 1.1.82 [exh.18] was in accordance with law and was meeting the requirements of order of appointment dated 31.8.81 [exh.17], because, appropriate notice of 7 days was issued to the plaintiff. It was also submitted by them that the suit was not maintainable in view of Section 11 of the Gujarat Civil Services Tribunal Act, 1972 and that the suit was bad for non-issuance of notice under Section 80 of the Act.

4. After recording the evidence and hearing the parties, the learned trial court held that the Civil Court had jurisdiction to entertain the matter, notice under Section 80 of the Code of Civil Procedure was not necessary in view of the plaintiff's application filed under sub-section [2] of Section 80 of the Code whereupon exemption from issuing notice was granted in favour of the plaintiff. The trial court further held that the suit in its frame was not

maintainable, because the plaintiff had filed the suit in Junagadh jurisdiction, while the grievances of the plaintiff were against the Forest Officer, Surendranagar. Being aggrieved by the said judgment and decree, the plaintiff took up the matter in appeal. The question of maintainability of the suit in view of Section 11 of 1972 Act and of notice under Section 80 of the Code of Civil Procedure were not raised by the State. The State, however, contended before the appellate court that the suit could not be entertained, because the termination dated 1.1.82 was in accordance with law and if the plaintiff had any cause of action, it was against the Forest Officer, Surendranagar, who did not allow the plaintiff to join. The learned first appellate court, after hearing the parties held that the order dated 1.1.82 was bad, because Hira Masri, junior to the plaintiff was retained in services and that the report of the Civil Surgeon at Surendranagar, showing the plaintiff's height was not 163 cm., was wrong, it accordingly allowed the appeal and held that the order dated 1.1.82 was bad, it directed the Deputy Forest Officer, Keshod to reinstate the

plaintiff in services.

5. Being aggrieved by the said judgment and decree, the State is before this Court.

6. Shri L.R. Pujari, learned AGP for the appellant State submits that from the plaintiff's own saying it would clearly appear that all persons who were appointed with the plaintiff or subsequent to him were removed from the services with one week's notice as required under exh.17, according to him, no person junior to the plaintiff was retained in services at Keshod, therefore, the order dated 1.1.82 could not be held to be invalid. His further submission is that if the Forest Officer at Surendranagar did not accept the recommendations made by the Deputy Forest Officer, Keshod, then wrong was at the end of the Forest Officer, Surendranagar. His further submission is that the plaintiff did not have any lien over the post as his appointment was temporary on ad-hoc basis for a period of one year only. His submission is that if all concerned were removed as surplus staff, then the plaintiff would not be permitted to say that he was picked and kicked.

7. Shri Dave, learned counsel for the respondent-plaintiff, on the other hand submits that when the plaintiff was appointed at Keshod, his height was measured and it was found that it was 165 cm. He also submits that undisputedly, Hira Masri Rathod, junior to the plaintiff has been retained in services at Surendranagar and for this reason only, the removal of the plaintiff from the services must be held to be bad. His further submission is that juniors to the plaintiff, if have been retained in one forest division or another, the same should be taken into consideration and the plaintiff's suit should be decreed.

8. From the facts available on the records, it clearly appears that number of the persons were removed from services as surplus staff on 1.1.82. The plaintiff being one of them was served with notice [exh.18]. It is yet to be noted that the department, to extend helping hand in favour of the plaintiff and such others, who were discharged from services, made recommendations to different Forest Divisions for their absorption or their appointment. The plaintiff and Hira Masri Rathod were sent to

Surendranagar Division, the plaintiff was denied appointment/absorption on the ground that his height was below 163 cm. and that there was no vacancy.

9. So far as the question of vacancy is concerned, the same could not be raised against the plaintiff, because Hira Masri, junior to the plaintiff was taken into services at Surendranagar, even the question of height could not have been raised against the plaintiff simply by observing that his height was below 163 cms. in view of the fact that at the time of his appointment at Keshod, his height was measured at 165 cms.

10. Unfortunately, the plaintiff under some advice, had filed the suit against the Deputy Forest Officer, Keshod and sought relief that his removal order/discharge dated 1.1.82 was bad. The plaintiff, in fact, without challenging the validity of the order dated 1.1.82, armed with the recommendations dated 4.1.82, went to join at Surendranagar. However, officers at Surendranagar acted illegally. The plaintiff had cause of action against the Forest Officer or his subordinates at Surendranagar and not at

Junagadh. The learned first appellate court has observed that the rejection of the plaintiff was not legal. I am in total agreement with the learned first appellate court, but I must record that the first appellate court went wrong in holding that the order dated 1.1.82 being bad could be set aside. The plaintiff, to challenge the order dated 1.1.82, has not brought anything on the record, specially that at Keshod any person junior to the plaintiff was retained or without notice of seven days, as required under exh.17, the plaintiff was removed from services. If the order dated 1.1.82 was meeting the standard fixed under order exh.17 and was not discriminating between the plaintiff and all others who were appointed with him, then no fault could be found with the order dated 1.1.82.

11. I must hold that the suit of the plaintiff at Junagadh could not be decreed, because the order dated 1.1.82 is not bad or illegal nor because it was not meeting the requirements of law or the order of appointment.

12. The appeal deserves to and is accordingly allowed. The judgment and decree passed by the

learned first appellate court are set aside and those of the learned trial court are restored.

13. Even while dismissing the suit, I will give liberty in favour of the plaintiff to approach the appropriate forum for redressal of his grievances or make representation to the State authorities either to appoint him or grant him some solace, because even in the opinion of this Court, the action of the officers at Surendranagar was patently illegal and bad.

14. The appeal is allowed. No costs.

15. Let a decree be framed accordingly.

[R.S. GARG, J.]

pirzada/-